



United States
Department of
Agriculture

Consolidated
Farm Service
Agency

P.O. Box 2415
Washington, D.C.
20013-2415

FmHA AN No. 3189 (1955-C)

August 7, 1995

TO: All Acting State Directors

ATTN: Farm Credit Programs Chiefs

SUBJECT: Advertisement and Sale of Farmer Programs Inventory
Property When No Credit Sale Funds are Available

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance on how to handle the management, sales, and leases of inventory farm properties since there are no credit sale funds currently available.

COMPARISON WITH PREVIOUS AN's:

This AN replaces AN No. 3102 (1955):

IMPLEMENTATION RESPONSIBILITIES:

This AN outlines the steps necessary for managing, leasing, and selling inventory farm properties when no credit sale funds are available.

1. Expiring Leaseback/Buyback and Homestead Protection Agreements:

When leaseback/buyback lessees apply to purchase the farm they are operating, they should be informed that CFSA does not have credit sale funds available. However, they will be assisted in obtaining financial assistance from other lenders if possible, including a CFSA guaranteed loan. Also, when funds are available, applicants may use direct Farm Ownership (FO) loan funds, including targeted Beginning Farmer Down Payment FO loan funds.

EXPIRATION DATE: August 31, 1996

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1955-C

The State Director may request an Administrator's exception to extend the lease of the property to the leaseback/buyback lessee. As a general guideline, leases should only be extended if all the following conditions were met and are adequately documented in the request letter for an Administrator's exception:

1. The lessee exercised the option to purchase. (The option to purchase must have been exercised prior to the termination of the lease.)
2. The lessee requested CFSA financial assistance to purchase the property.
3. The lessee would have been eligible (e.g. feasible farm plan considering the use of Agency funds at limited resource or regular FO rates and terms) to purchase the property as a credit sale if credit sale funds were available.
4. Any delinquencies, if any, resulting from the original lease have been resolved.

In cases involving appeals of some aspect of the proposed purchase, if the lessee exercised the option before the lease expired, the Agency should await the outcome of the appeal before determining whether the lease should be extended. If a credit sale request was denied because the Agency determined the lessee could not develop a feasible plan, the lease should be extended only if the applicant prevails in the appeal.

The lease may be extended for a term not to exceed 1-year and will contain an option to purchase. The purchase price (option to purchase) in the extended lease will be for the market value of the property as of the date the option is exercised in the future.

FOR HOMESTEAD PROTECTION AGREEMENTS WHICH ARE EXPIRING, CFSA CANNOT EXTEND THE LEASE TERM. HOMESTEAD PROTECTION LESSEES SHOULD BE NOTIFIED AT LEAST 6 MONTHS PRIOR TO THE EXPIRATION OF THEIR HOMESTEAD PROTECTION AGREEMENT THAT CFSA DIRECT CREDIT ASSISTANCE MAY NOT BE AVAILABLE AND THAT OTHER FINANCING SHOULD BE SOUGHT.

2. Advertisement and Sale:

CFSA will continue its efforts to sell both suitable and surplus inventory farm properties. All advertisements should state that CFSA may be unable to provide direct financial assistance due to a lack of credit sale and FO loan funds. CFSA personnel will assist applicants for

suitable properties in obtaining CFSA guaranteed loans, where such funds are available. Also, when funds are available, applicants may use direct FO and Beginning Farmer Downpayment FO loan funds. Loan approval officials should consider providing downpayment FO loan assistance to eligible beginning farmers in conjunction with lender financing either with or without the use of a loan guarantee.

Sales of suitable inventory farm property will still be handled in accordance with section 1955.107(f) of FmHA Instruction 1955-C. Applicants in categories 1 through 4 may still purchase inventory farms if they are eligible for a guaranteed loan, a direct FO loan, or a Beginning Farmer Downpayment FO loan (provided funds are available). If applicants in these first four categories are not eligible for a guaranteed loan, a direct FO loan, a Downpayment FO loan, or if funds are not available, they should be notified accordingly, and the applicants (if any) in category 5 should be given consideration.

in this paragraph the buyer would need to be eligible for Beginning Farmer Downpayment

If CFSA is unsuccessful in selling a property, leasing should be considered as outlined in section #3 of this AN. Surplus properties will continue to be sold by the use of sealed bids or public auctions. The only change in the process of selling surplus property is that CFSA cannot offer any credit assistance including the use of nonprogram loans.

3. General Leasing of Inventory Property:

Suitable inventory farm property will be advertised for sale in accordance with section 1955.108 of FmHA Instruction 1955-C and section 2 of this AN. If you are unsuccessful in selling the property after the first advertisement, the second advertisement will contain a statement that CFSA will consider leasing the property to eligible persons for a 1-year term with an option to purchase if CFSA's attempt to sell it is unsuccessful. CFSA will select lessees from categories (1) through (4) in accordance with the priority selection criteria outlined in section 1955.107 of FmHA Instruction 1955-C. This priority selection criteria will be used in all advertisements for lease. The advertisement will also state that CFSA financing will be subject to the availability of funds. A statement to this effect will also be included as a special stipulation in the lease agreement. The purchase price of the property will be the market value of the property as of the date the option is exercised.

ANY SALES CONTRACTS OR LEASE AGREEMENTS ENTERED INTO MUST CONTAIN A STATEMENT THAT CFSA'S OBLIGATION TO FINANCE THE SALE IS CONTINGENT UPON THE AVAILABILITY OF LOAN FUNDS. IN THE CASE OF

✓ PREACQUISITION LEASEBACK/BUYBACK OR HOMESTEAD PROTECTION, THE AGREEMENTS SHOULD ALSO BE MODIFIED WITH THIS CONTINGENCY AND THE FORMER OWNER MUST BE ADVISED OF THE LACK OF CREDIT SALE AND FO LOAN FUNDS.

4. Management of Leased Properties

Since properties may remain in inventory for a longer period of time due to the lack of credit sale and FO loan funds, the repair and management of these properties should not be neglected. Buildings and essential equipment on inventory farms under lease should be repaired as necessary to protect the Government's interest. Also, leased properties should be closely monitored to ensure that the lessee is abiding by all terms and conditions of the lease agreement. If violations are observed, appropriate actions should be taken.

If applicable, leases should contain restrictions on the use of highly erodible land, wetlands, floodplains, and other important resources.

If you have any questions concerning this AN, state office personnel may contact James P. Fortner of the Farm Credit Programs Loan Servicing and Property Management Division at (202) 720-1976.

Lou Anne Kling
LOU ANNE KLING
Acting Deputy Administrator
Farm Credit Programs